



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

**[EPA-R03-OAR-2017-0453; FRL-9975-33-Region 3]**

**Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; City of Philadelphia; Control of Emissions from Existing Hospital/Medical/Infectious Waste Incinerator Units**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to reaffirm and reapprove a negative declaration for existing hospital/medical/infectious waste incinerator (HMIWI) units within the City of Philadelphia. This negative declaration certifies that existing HMIWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist within the jurisdictional boundaries of the Philadelphia Air Management Service (AMS). EPA is accepting the negative declaration in accordance with the requirements of the CAA.

**DATES:** This rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R03-OAR-2017-0453. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by

statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Mike Gordon, (215) 814-2039, or by e-mail at [gordon.mike@epa.gov](mailto:gordon.mike@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. CAA section 129 directs EPA to establish standards of performance for new sources and emissions guidelines for existing sources for each category of solid waste incineration unit. CAA section 129(a) and (b). EPA also must specify numerical emissions limitations for particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. CAA section 129(a)(4).

On September 15, 1997 (62 FR 48348), EPA first promulgated HMIWI unit new source performance standards, 40 CFR part 60, subpart Ec, and emission guidelines for existing

facilities, subpart Ce. These regulations were then amended on October 6, 2009 (74 FR 51368) and on April 4, 2011 (76 FR 18407).

The designated facilities to which the EG apply are existing HMIWI units that: 1) commenced construction on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998; or 2) commenced construction after June 20, 1996 but no later than December 1, 2008, or for which modification commenced after March 16, 1998 but no later than April 6, 2010, with limited exceptions as provided in paragraphs 40 CFR 60.32e(b) through (h).

Subpart B and Ce of 40 CFR part 60 establish procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants from existing HMIWI facilities. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When existing designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (i.e., negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a section 111(d)/129(b) plan.

On October 12, 2017 (82 FR 47398 and 82 FR 47421), EPA simultaneously published a notice of proposed rulemaking (NPR) and a direct final rule (DFR) for the City of Philadelphia approving a negative declaration from Philadelphia AMS that there are no existing HMIWI units subject to

the requirements of sections 111(d) and 129 of the CAA in its respective air pollution control jurisdiction. EPA explained that if it did not receive an adverse comment on the NPR, the DFR would take effect with no further administrative action. EPA received an adverse comment on the NPR and attempted to withdraw the DFR prior to its effective date of December 11, 2017. However, EPA inadvertently did not withdraw the DFR prior to that date and the rule prematurely became effective on December 11, 2017, revising 40 CFR part 62 to reflect the approval of the negative declaration. In the NPR, EPA had proposed to approve the negative declaration. In this final rulemaking, EPA is responding to the comment submitted on the proposed approval of the negative declaration and approving the negative declaration. This action supersedes the prior DFR which went in to effect prematurely and had an effective date of December 11, 2017.

## **II. State Submittal and EPA Analysis**

Philadelphia AMS has determined that there are no existing HMIWI units subject to the requirements of sections 111(d) and 129 of the CAA in its respective air pollution control jurisdiction. Accordingly, Philadelphia AMS submitted a negative declaration letter to EPA certifying this fact on August 2, 2011. The negative declaration letter and EPA's technical support document for this action are available in the docket for this rulemaking and online at [www.regulations.gov](http://www.regulations.gov).

## **III. Public Comment and EPA Response**

EPA received one adverse comment on the proposed approval of the negative declaration for

existing HMIWI units submitted by Philadelphia AMS.

*Comment:* The commenter stated that EPA must ensure that no additional HMIWI units have been constructed since the time of Philadelphia's certification letter. The commenter also asserted that since so much time has passed since the submittal of the negative declaration, EPA cannot rely on such an outdated form of information to ensure no units have been built.

*Response:* EPA does not agree with the commenter's assertion that EPA must ensure that no additional HMIWI units have been constructed since Philadelphia AMS submitted the negative declaration on August 2, 2011 in order to finalize this action. As stated in the technical support document for the NPR and the emission guidelines for existing HMIWI units (40 CFR 60 subpart Ce), the designated facilities to which the EG apply are existing HMIWI units that: 1) commenced construction on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998; or 2) commenced construction after June 20, 1996 but no later than December 1, 2008, or for which modification commenced after March 16, 1998 but no later than April 6, 2010, with limited exceptions as provided in paragraphs 40 CFR 60.32e(b) through (h). 40 CFR 60.32e(a). Thus, to obtain EPA approval of Philadelphia's negative declaration regarding existing HMIWI units, Philadelphia only needed to assert no HMIWI units exist that commenced construction before December 1, 2008 or commenced modification before April 6, 2010. Because Philadelphia's August 2, 2011 submittal meets that criterion, Philadelphia's negative declaration did not need to address whether any new units have been constructed since

the time of Philadelphia's certification letter on August 2, 2011. EPA's acceptance of Philadelphia's negative declaration therefore is appropriate.

HMIWI units constructed in Philadelphia after the above cited dates would be considered "new," as opposed to "existing," and therefore would be subject to a separate rule - 40 CFR 60 subpart Ec, "Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators." EPA is not aware of any new HMIWI units within the jurisdictional boundaries of Philadelphia AMS. If EPA became aware of a new HMIWI unit in Philadelphia, it would have no bearing on the approvability of this HMIWI negative declaration because it only pertains to existing sources.

At the time of Philadelphia's submission, EPA worked with Philadelphia AMS and reviewed Philadelphia's inventory of sources to ensure no existing HMIWI units existed within Philadelphia, and the commenter has not provided any information to the contrary that would cause EPA to reconsider the assessment of Philadelphia AMS's negative declaration. EPA is therefore finalizing the negative declaration for existing HMIWI units in this action.

#### **IV. Final Action**

In this final action, EPA is reaffirming and reapproving the previous amendment to part 62 to reflect receipt of the negative declaration letter from Philadelphia AMS. EPA is accepting the negative declaration in accordance with the requirements of the CAA and 40 CFR 60.23(b) and 62.06.

## **V. Statutory and Executive Order Reviews**

### **A. General Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely notifies the public of EPA receipt of a negative declaration from an air pollution control agency without any existing HMIWI units in their jurisdiction. This action imposes no requirements. Accordingly, EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132

(64 FR 43255, August 10, 1999). This action merely approves the negative declaration for existing HMIWI units from the Philadelphia AMS and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

With regard to negative declarations for designated facilities received by EPA from states, EPA’s role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to approve or disapprove a CAA section 111(d)/129 plan negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a CAA section 111(d)/129 negative declaration, to use VCS in place of a section 111(d)/129 negative declaration that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to



each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **Insert date 60 days after date of publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the negative declaration for existing HMIWI units within the City of Philadelphia may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### **List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: February 23, 2018.

Cosmo Servidio,  
Regional Administrator,  
Region III.

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